



GREENBERG GROSS LLP

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January 8, 2016

The Honorable Charles R. Breyer  
United States District Court  
Courtroom 6, 17th Floor  
450 Golden Gate Avenue  
San Francisco, CA 94102

**Re: In re: Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation, MDL No. 2672 CRB (JSC)**

Dear Judge Breyer:

I, Wayne R. Gross, respectfully submit this application for appointment to Plaintiffs’ Steering Committee (“Steering Committee”), pursuant to Pretrial Order No. 2, and to support the appointment of Mark P. Robinson, Jr., of Robinson Calcagnie Robinson Shapiro Davis, Inc., to a lead counsel position in the above matter. My request for appointment is to serve in the capacity of liaison with the federal and state enforcement and regulatory officials who are investigating and prosecuting the same conduct that is at issue in this litigation. I have filed a putative class action on behalf of purchasers of Volkswagen and Audi diesel vehicles, which has been transferred to this MDL. *Allen Davis v. Volkswagen Group of America, Inc., et al.*, 15-cv-01571-DOC-KES (co-counsel Michael I. Katz and Alan A. Greenberg).

As the former chief of the Orange County Division of the Office of the United States Attorney for the Central District of California, I can make an impactful and necessary contribution to the Steering Committee to serve in the role of liaison with the United States Department of Justice in the parallel civil suit brought by the Department of Justice in Michigan. *United States of America v. Volkswagen AG et al.*, 2:16-cv-10006-LJM-MJH. I can also act on behalf of the Steering Committee to liaise and coordinate with the California and U.S. Environmental Protection Agencies, and the Department of Justice regarding the ongoing criminal investigation. Based on my 17 years of service as a federal prosecutor, which includes managing numerous significant investigations of environmental matters involving the EPA, I understand the importance of coordination with these federal and state agencies and the ongoing criminal proceedings to the fair and efficient resolution of this matter.

## 1. Professional Experience

My co-counsel and I have extensive experience litigating complex matters, including consumer class actions. I have been selected to serve as lead trial counsel by companies and executives in their most important business litigation matters. For example, I was lead co-counsel in a recent seven-week jury trial resulting in a multi-million dollar verdict for the global engineering firm I represented. In another recent matter, I defended a prominent law firm in a lawsuit seeking \$600 million in damages.



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My firm obtained complete pretrial dismissal of the case. The case involved numerous plaintiffs and defendants, as well as highly complex factual issues.

I have also been recognized by my colleagues for my legal work and my service to the legal community, serving in 2013 as President of the Orange County Bar Association, the second largest bar association in the State of California.

## **2. Judicial References**

The Honorable David O. Carter presides over *In Re Medical Capital Securities Litigation* (MDL No. 2145). In that case, I represent the former CEO of Medical Capital Holdings. Federal authorities investigated Medical Capital and its executives for allegedly engaging in the largest Ponzi scheme in Orange County history, involving alleged losses of close to \$1 billion. The telephone number for Judge Carter's chambers is 714-338-4543.

The Honorable Andrew J. Guilford presides over a pending gender discrimination and retaliation lawsuit my firm filed against Broadcom Corporation, one of the world's largest semiconductor companies. (*Jennifer Davies v. Broadcom Corporation* (C.D. Cal.).) The telephone number for Judge Guilford's chambers is 714-338-4757.

The Honorable William D. Claster presided over a recent seven-week jury trial in which I represented the defendants and cross-complainants. (*Colaco v. Cavotec* (Orange County Sup. Ct.).) My firm obtained a complete defense verdict and a multimillion-dollar verdict on a counterclaim against the plaintiffs. The telephone number for Judge Claster's chambers is 657-622-5218.

The Honorable Robert J. Moss presided over a complex case in which I defended a prominent law firm. Plaintiffs had alleged seventeen causes of action, including fraud, conspiracy, and violation of RICO, in a 500-page complaint seeking more than \$600 million in damages. The action involved highly complex issues, numerous plaintiffs and defendants, and complicated financial transactions spanning a decade. My firm's motion directly resulted in a pre-trial dismissal of the entire action. (*Ruth McClamma Stueve et al. v. Raymond Novell et al.* (Orange County Sup. Ct.).) The telephone number for Judge Moss's chambers is 657-622-5302.

## **3. Willingness and Ability to Commit to This Litigation and to Work Cooperatively**

I am willing and able to commit the time and resources necessary to serve as an effective member of the Steering Committee and to secure a fair and efficient resolution of this litigation. I am a senior and founding partner of Greenberg Gross LLP. We at Greenberg Gross LLP are willing and able to commit to this litigation. My co-counsel in this matter are also highly qualified. Alan A. Greenberg, the managing partner of my firm, is an accomplished trial attorney who handles high-stakes and complex cases. Mr. Greenberg has repeatedly been named to The Best Lawyers in America and Southern California Super Lawyers, and has a Martindale Hubbell peer-review rating of AV Preeminent, 5.0 out of 5.0. Mr. Greenberg is also a Fellow of the Litigation Counsel of America.



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Michael I. Katz, formerly a partner at Morrison & Foerster, LLP, has over twenty years of experience litigating complex business disputes, including unfair competition and consumer class actions. He has received the same accolades as Mr. Greenberg and has been named to Southern California Super Lawyers every year since 2004.

Finally, my firm has developed a reputation for both civility and zealous advocacy. My firm represents both plaintiffs and defendants in significant matters. Having sat on both sides of the table, I am committed to working cooperatively with other plaintiffs' defense counsel.

#### 4. Unique Contribution to the Steering Committee

My background as a federal prosecutor and my experience working with federal agencies will allow me to bring a unique and important perspective to the Steering Committee. This month, the Department of Justice filed a civil suit against Volkswagen in Michigan. *United States of America v. Volkswagen AG et al.*, 2:16-cv-10006-LJM-MJH. Like this litigation, the Michigan suit alleges that Volkswagen improperly used a defeat device to circumvent environmental regulations. The Justice Department's civil suit is likely a prelude to criminal charges.<sup>1</sup> Numerous state attorneys general are also investigating Volkswagen. Because these parallel government investigations involve the same allegations, effective coordination with state and federal officials will significantly advance the fair and efficient resolution of this MDL.

In my practice, I frequently interface with federal officials. I also have extensive federal criminal experience. As a federal prosecutor, I served in various supervisory positions, including chief of the Orange County Division of the Office of the United States Attorney, Central District of California. During my tenure as a prosecutor, I prosecuted high-profile cases and was presented with awards by two U.S. Attorneys General. I continue to devote a portion of my practice to internal investigations, corporate crisis management, and white-collar defense. This background will allow me to effectively liaise with federal and state officials who are also investigating Volkswagen.

Thank you for considering my application for appointment to the Steering Committee.

Respectfully submitted,

/s/ Wayne R. Gross  
 Wayne R. Gross

Enclosure

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<sup>1</sup> VW Criminal Charges on Deck, CORPORATE CRIME REPORTER, <http://www.corporatecrimereporter.com/news/200/vw-criminal-charges-on-deck> (last visited Jan. 8, 2016) (quoting Professor David Uhlman's prediction that criminal charges will follow the Justice Department's civil suit).